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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,644	09/27/2001	Mark W. Bitensky	S-092701	3052

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Ronald I. Eisenstein
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110

EXAMINER

SPIEGLER, ALEXANDER H

ART UNIT PAPER NUMBER

1637

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/965,644

Applicant(s)

BITENSKY ET AL.

Examiner

Alexander H. Spiegler

Art Unit

1637

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-18.

Claim(s) withdrawn from consideration: 19-46.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE:

Applicants' proposed amendments would require further search and consideration that was not previously required. For example, in Claim 1, Applicants have amended the claim to recite, "wherein each individual microchannel includes an entry portion for receiving said cell and an exit channel that said cell may pass through, wherein the microchannel is designed to use its shape as a geometric constraint to trap said cell as it traverses the microchannel, such that the trapped cell does not leave the microchannel but is constrained by its shape to remain in the microchannel." In Claim 2, Applicants have amended the claim to recite, "wherein said array is designed as a gradient array, wherein there are a plurality of microchannels, wherein each individual microchannel has a width, a length, and a depth, wherein the depth remains constant but the width and/or length is varied between microchannels for trapping said cell." In Claim 4, Applicants have deleted the recitation of "substantially," and Claim 18 has been amended to recite, "wherein said length and width are set in order to form a microchannel having a geometrical shape that will capture the individual cell desired." Each of these claim amendments would require a specific search and consideration for the newly added limitations now present in the claims. For example, Claim 1 now requires a search for an array of microchannels, wherein "each individual microchannel includes an entry portion for receiving said cell and an exit channel that said cell may pass through, wherein the microchannel is designed to use its shape as a geometric constraint to trap said cell as it traverses the microchannel, such that the trapped cell does not leave the microchannel but is constrained by its shape to remain in the microchannel." Thus, because this limitation (and those added to Claims 2, 4 and 18) was not previously required by the claims, a new search and further consideration under 35 USC 102 and/or 103 would be required.

Continuation of 5. does NOT place the application in condition for allowance because of the non-entry of the amendment filed on November 8, 2004, and for the reasons of record. It is also noted that Applicants' arguments are directed to the proposed amended claims, and therefore, because these amendments have not been entered, Applicants' arguments are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander H. Spiegler whose telephone number is (571) 272-0788. The examiner can normally be reached on Monday through Friday, 7:00 AM to 3:30 PM.

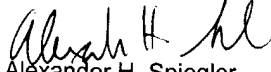
If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Gary Benzion can be reached at (571) 272-0782.


Papers related to this application may be faxed to Group 1637 via the PTO Fax Center using the fax number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.


Alexander H. Spiegler
November 18, 2004


GARY BENZION, PH.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600